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11:11 AM

Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
 Case Summary
 Civil Docket

WOCV2005-01483
Johnson v Coleman II

File Date	08/11/2005	Status	Disposed: transfered to other court (dtrans)
Status Date	09/06/2005	Session	B - Civil B (18 Worcester)
Origin	1	Case Type	B03 - MV negligence/pers injury/prop dmg
Lead Case		Track	F

Service	11/09/2005	Answer	01/08/2006	Rule 12/19/20	01/08/2006
Rule 15	01/08/2006	Discovery	06/07/2006	Rule 56	07/07/2006
Final PTC	08/06/2006	Disposition	10/05/2006	Jury Trial	Yes

PARTIES

Plaintiff

Robert A Johnson
 Active 08/11/2005

Private Counsel 547529

Anthony M Salerno
 Scannell & Salerno
 316 Main Street
 4th floor
 Worcester, MA 01608
 Phone: 508-795-1200
 Fax: 508-795-1333
 Active 08/11/2005 Notify

Defendant

Clement Jack Coleman II
 P.O. Box 866
 Oak Bluffs, MA 02557
 Phone: 508-627-7840
 Answered: 08/26/2005
 Answered 08/26/2005 Notify

Plaintiff/counterclaim

Clement Jack Coleman II
 Active 08/29/2005

Defendant/counterclaim

Robert A Johnson
 Active 08/29/2005

ENTRIES

Date	Paper	Text
08/11/2005	1.0	Complaint civil action cover sheet and Rule 29 statement filed-CJ
08/11/2005		Origin 1, Type B03, Track F.
08/11/2005		Filing fee paid in the amount of \$240.00 including \$15.00 surcharge

**CIVIL ACTION
COVER SHEET**

05-1483 B

**Trial Court of Massachusetts
Superior Court Department
County: WORCESTER****PLAINTIFF(S)**

Robert A. Johnson

DEFENDANT(S)

G. Jack Coleman, II

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

Anthony M. Salerno, Esq.

316 Main Street, Worcester, MA 01608

Board of Bar Overseers number: 547529 (508) 795-1200

ATTORNEY (if known)**Origin code and track designation**

Place an x in one box only:

- ☒ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- ☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.

TYPE OF ACTION (specify)

TRACK

IS THIS A JURY CASE?

B03

MV Negligence/Personal Injury (F)

(X) Yes

() No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|---|--------------------|
| 1. Total hospital expenses | \$ 1,670.46 |
| 2. Total Doctor expenses | \$ 690.00 |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ 2,545.00 |
| 5. Total other expenses (describe) Ambulance, Dianostic Testing, Prescriptions..... | \$ 4,270.28 |
| Subtotal | \$ 9,175.74 |

B. Documented lost wages and compensation to date

..... \$

C. Documented property damages to date

..... \$

D. Reasonably anticipated future medical and hospital expenses

..... \$ unknown

E. Reasonably anticipated lost wages

..... \$

F. Other documented items of damages (describe)

..... \$

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Multiple severe muscle strains mainly of the back.

\$9,175.74.....

TOTAL \$.....**CONTRACT CLAIM**

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

AUG 11 2005

ATTEST:

CLERK

TOTAL \$.....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE:

8/11/05

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. **05-1483**

ROBERT A. JOHNSON,

Plaintiff,

vs.

CLEMENT JACK COLEMAN II,

Defendant.

COMPLAINT AND DEMAND
FOR JURY TRIAL

FILED

AUG 11 2005

ATTEST:

Francis A. Ford
CLERK

PARTIES

1. The plaintiff, Robert A. Johnson, is an individual residing in the Town of Whitinsville, County of Worcester, Commonwealth of Massachusetts.
2. The defendant, Clement Jack Coleman II is an individual who, at the time of the accident resided in the Town of Oak Bluffs, County of Dukes, Commonwealth of Massachusetts, hereinafter referred to as "Coleman."

FACTS

3. On or about August 28, 2002, the defendant, Coleman, was operating a motor vehicle owned by Tri State Subaru, on a public way located in the Town of Sutton, County of Worcester, Commonwealth of Massachusetts, known as Route 146, hereinafter referred to as the "Coleman vehicle".
4. At the same time and place, the plaintiff, Robert A. Johnson, hereinafter referred to as "Johnson", was a pedestrian on the median along a public way on Route 146, in the Town of Sutton, County of Worcester, Commonwealth of Massachusetts.
5. The defendant, C. Jack Coleman, so negligently and carelessly operated the Coleman vehicle so as to cause it to collide with Johnson.
6. As a direct and proximate result of the defendant, Coleman's, negligent, careless, wrongful, improper and unlawful operation of said motor vehicle, the plaintiff was caused serious personal injuries to both body and mind.

PAGE TWO

COUNT I

7. This is a cause of action by plaintiff, Robert A. Johnson, against the defendant, Clement Jack Coleman II, for negligence resulting in personal injury.

8. The defendant, Clement Jack Coleman II, so negligently and carelessly operated the Coleman vehicle so as to cause it to collide with Johnson.

9. As a direct and proximate result of the defendant, Clement Jack Coleman's, negligent, careless, wrongful, improper and unlawful operation of said motor vehicle, the plaintiff was caused serious personal injuries to both body and mind.

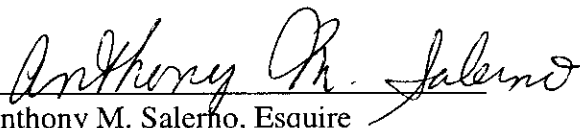
WHEREFORE, plaintiff, Robert A. Johnson, demands judgment against the Defendant, Clement Jack Coleman II, in the amount of his damages, together with costs, interest and attorney's fees.

JURY TRIAL CLAIM

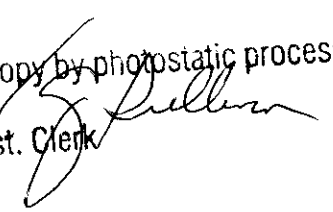
THE PLAINTIFF, ROBERT A. JOHNSON, RESPECTFULLY REQUESTS A TRIAL BY JURY ON ALL ISSUES.

ROBERT A. JOHNSON

By his attorney,


Anthony M. Salerno, Esquire
SALERNO LAW GROUP, P.C.
316 Main Street
Worcester, MA 01608
(508) 795-1200
BBO NO. 547529

Dated: August 11, 2005

A true copy by photostatic process
Attest: 
Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

ROBERT A. JOHNSON,

Plaintiff,

vs.

C. JACK COLEMAN, II,

Defendant.


UNIFORM COUNSEL
CERTIFICATION FOR CIVIL CASES

I am attorney-of-record for Robert A. Johnson, plaintiff in the above-entitled matter.

In accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1: 18) which states in part: "... Attorneys shall: provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent . . ."

2

I hereby certify that I have complied with this requirement.


Anthony M. Salerno
Attorney for Plaintiff

A true copy by photostatic process

Attest:

Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

FILED

AUG 26 2005

Superior Court
Department of the Trial Court
of the Commonwealth
Civil Action

No. 05-1483 ^B

ROBERT A. JOHNSON

ATTEST:

Francis A. Ford
CLERK

Plaintiff (s)

v.

CLEMENT JACK COLEMAN II

Defendant (s)

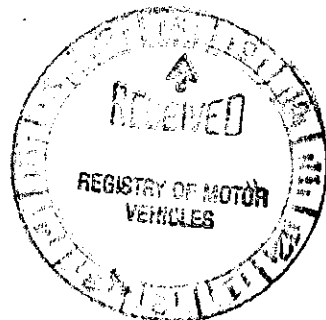
SUMMONS

* To the above-named Defendant: Clement Jack Coleman II

You are hereby summoned and required to serve upon
.....Anthony M. Salerno, Esquire....., plaintiff's attorney,
whose address is ...316 Main Street, Suite 400, Worcester, MA 01608.....
an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgement by default will be taken against you for the relief demanded in the complaint.
You are also required to file your answer to the complaint in the SUPERIOR COURT
Department of the Trial Court at WORCESTER either before service upon plaintiff's
attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-
claim any claim which you may have against the plaintiff which arises out of the
transaction of occurrence that is the subject matter of the plaintiff's claim or you will
thereafter be barred from making such claim in any other action.

Witness, BARBARA J. ROUSE, Esquire, at Worcester, the eleventh
day of August in the year of our Lord two thousand and
five



Francis A. Ford
Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT —
CONTRACT EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

* NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but
if you claim to have a defense, either you or your attorney must serve a copy of your written
answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior
Court, Room 21.

*Rmv
need copies
11/02*

PROOF OF SERVICE OF PROCESS



Worcester County Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100
Worcester, ss

08/16/2005

I hereby certify and return that on 08/15/2005 at 11:35am, I served two copies of the within Summons and Complaint & Demand for Jury Trial, Uniform Counsel Certification for Civil Cases, Civil Action Cover Sheet upon the within named CLEMENT JACK COLEMAN II, by delivering in hand to JULIE COCHRAN, agent of the Massachusetts Registry of Motor Vehicles at 611 Main Street, Worcester, MA along with \$10.00 in fees. Fees: Service 30.00, Travel 3.84, Conveyance 2.00, Attest 5.00 & Postage and Handling 1.00 & Registry Fee 10.00. Total Fees: \$51.84.

Deputy Sheriff Steven J Trottier

Deputy Sheriff

N.B. TO PROCESS SERVER:

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX
ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

August 15, 2005

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

Superior Court
Civil Action

No. 05-1483-C

Robert A. Johnson.....Plaintiff

v.

Clement Jack Coleman II.....Defendant

SUMMONS

(Mass. R. Civ. P. 4)

A true copy by photostatic process
Attest:
Asst. Clerk



The Commonwealth of Massachusetts

Registry of Motor Vehicles

One Copley Place, Boston 02116

Kimberly Hinden
Registrar

Mail:
P.O. Box 199100
Boston, MA 02119-9100
www.mass.gov/rmv

RECEIVED

AUG 22 2005

August 19, 2005

Anthony J. Salerno, Esq.
316 Main Street, Suite 400
Worcester, MA 01608

RE: ROBERT A. JOHNSON VS. CLEMENT JACK COLEMAN, II.
WORCESTER, SS., SUPERIOR COURT DEPARTMENT- CIVIL ACTION NO #
05-1483

Dear Atty. Salerno:

The attached process has been served on the defendant pursuant to the provisions of M.G.L. c. 90 §3D. Below please find the executed affidavit set forth in §3D, which by law serves as prima facie evidence of service upon that party.

AFFIDAVIT

This hereby certifies that the attached process served upon the Registrar of Motor Vehicles was forwarded by mail August 19, 2005, postage prepaid, to Clement Jack Coleman, II. at the last address appearing in the Registrar's records. This is in accordance with the provisions of M.G.L. c. 90, §3D.

Signed under the pains and penalties of perjury on August 19, 2005.

Signed: _____

Kathleen Munson

Kathleen Munson, Keeper of the Records

ba

A true copy by photostatic process
Attest:
Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

8.15.05
A TRUE COPY ATTEST
[Signature]
DEPUTY SHERIFF

Superior Court
Department of the Trial Court
of the Commonwealth
Civil Action

No. 05-1483 ^B

ROBERT A. JOHNSON

Plaintiff (s)

v.

SUMMONS

CLEMENT JACK COLEMAN II

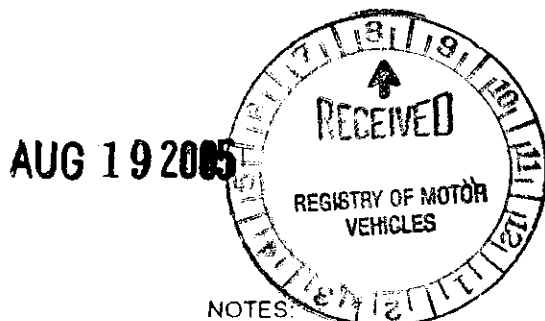
Defendant (s)

* To the above-named Defendant: Clement Jack Coleman II

You are hereby summoned and required to serve upon.....
.....Anthony M. Salerno, Esquire....., plaintiff's attorney,
whose address is316 Main Street, Suite 400, Worcester, MA 01608.....
an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgement by default will be taken against you for the relief demanded in the complaint.
You are also required to file your answer to the complaint in the SUPERIOR COURT
Department of the Trial Court at WORCESTER either before service upon plaintiff's
attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-
claim any claim which you may have against the plaintiff which arises out of the
transaction of occurrence that is the subject matter of the plaintiff's claim or you will
thereafter be barred from making such claim in any other action.

Witness, BARBARA J. ROUSE, Esquire, at Worcester, the eleventh
day of August.....in the year of our Lord two thousand and
five.....



[Signature]
Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT —
CONTRACT EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

*

NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but
if you claim to have a defense, either you or your attorney must serve a copy of your written
answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior
Court, Room 21.

Rmv
need car

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

05-1483 B

ROBERT A. JOHNSON,

Plaintiff,

vs.

CLEMENT JACK COLEMAN II,

Defendant.

COMPLAINT AND DEMAND
FOR JURY TRIAL

RECEIVED

AUG 11 2005

CLERK OF COURTS
WORCESTER COUNTY

PARTIES

1. The plaintiff, Robert A. Johnson, is an individual residing in the Town of Whitinsville, County of Worcester, Commonwealth of Massachusetts.
2. The defendant, Clement Jack Coleman II is an individual who, at the time of the accident resided in the Town of Oak Bluffs, County of Dukes, Commonwealth of Massachusetts, hereinafter referred to as "Coleman."

FACTS

3. On or about August 28, 2002, the defendant, Coleman, was operating a motor vehicle owned by Tri State Subaru, on a public way located in the Town of Sutton, County of Worcester, Commonwealth of Massachusetts, known as Route 146, hereinafter referred to as the "Coleman vehicle".
4. At the same time and place, the plaintiff, Robert A. Johnson, hereinafter referred to as "Johnson", was a pedestrian on the median along a public way on Route 146, in the Town of Sutton, County of Worcester, Commonwealth of Massachusetts.
5. The defendant, C. Jack Coleman, so negligently and carelessly operated the Coleman vehicle so as to cause it to collide with Johnson.
6. As a direct and proximate result of the defendant, Coleman's, negligent, careless, wrongful, improper and unlawful operation of said motor vehicle, the plaintiff was caused serious personal injuries to both body and mind.

PAGE TWO

COUNT I

7. This is a cause of action by plaintiff, Robert A. Johnson, against the defendant, Clement Jack Coleman II, for negligence resulting in personal injury.

8. The defendant, Clement Jack Coleman II, so negligently and carelessly operated the Coleman vehicle so as to cause it to collide with Johnson.

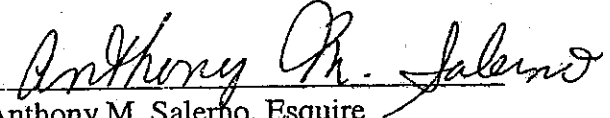
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WHEREFORE, plaintiff, Robert A. Johnson, demands judgment against the Defendant, Clement Jack Coleman II, in the amount of his damages, together with costs, interest and attorney's fees.

JURY TRIAL CLAIM

THE PLAINTIFF, ROBERT A. JOHNSON, RESPECTFULLY REQUESTS A TRIAL BY JURY ON ALL ISSUES.

ROBERT A. JOHNSON
By his attorney,


Anthony M. Salerno, Esquire
SALERNO LAW GROUP, P.C.
316 Main Street
Worcester, MA 01608
(508) 795-1200
BBO NO. 547529

Dated: August 11, 2005

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

ROBERT A. JOHNSON,

Plaintiff,

vs.

C. JACK COLEMAN, II,

Defendant.

UNIFORM COUNSEL
CERTIFICATION FOR CIVIL CASES

I am attorney-of-record for Robert A. Johnson, plaintiff in the above-entitled matter.

In accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1: 18) which states in part: "... Attorneys shall: provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent ..."

I hereby certify that I have complied with this requirement.



Anthony M. Salerno
Attorney for Plaintiff

CIVIL ACTION COVER SHEET	DOCKET NO.(S) 	Trial Court of Massachusetts Superior Court Department County: WORCESTER
PLAINTIFF(S) Robert A. Johnson	DEFENDANT(S) G. Jack Coleman, II	
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Anthony M. Salerno, Esq. 316 Main Street, Worcester, MA 01608 Board of Bar Overseers number: 547529 (508) 795-1200	ATTORNEY (If known)	

Origin code and track designation

Place an x in one box only:

<input checked="" type="checkbox"/> 1. F01 Original Complaint	<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)	<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
BO3	MV Negligence/Personal Injury (F)		(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(Attach additional sheets as necessary)

A. Documented medical expenses to date:	1,670.46
1. Total hospital expenses	\$ 690.00
2. Total Doctor expenses	\$
3. Total chiropractic expenses	\$
4. Total physical therapy expenses	\$ 2,545.00
5. Total other expenses (describe) Ambulance, Diagnostic Testing, Prescriptions.....	\$ 4,270.28
Subtotal	\$ 9,175.74
B. Documented lost wages and compensation to date	\$
C. Documented property damages to date	\$
D. Reasonably anticipated future medical and hospital expenses	\$ unknown
E. Reasonably anticipated lost wages	\$
F. Other documented items of damages (describe)	\$
G. Brief description of plaintiff's injury, including nature and extent of injury (describe) Multiple severe muscle strains mainly of the back.	\$9,175.74....
TOTAL \$

CONTRACT CLAIMS
(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules of Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record Anthony M. Salerno DATE: 8/11/05

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 05-1483B

ROBERT A. JOHNSON,

Plaintiff,

vs.

CLEMENT JACK COLEMAN II,

Defendant,

FILED

AUG 26 2005

ATTEST:

Francis A. Ford
CLERK

DEFENDANT'S ANSWER WITH COUNTERCLAIMS AND DEMAND FOR JURY TRIAL

PARTIES

1. The defendant Clement Jack Coleman II, hereinafter referred to as "Coleman", is without sufficient knowledge to admit or deny the allegations contained in ¶ 1 of the plaintiffs' complaint.
2. Coleman admits the allegations contained in ¶ 2 of the plaintiffs' complaint.

FACTS

3. Coleman admits the allegations contained in ¶ 3 of the plaintiffs' complaint.
4. Coleman denies the allegations contained in ¶ 4 of the plaintiffs' complaint.
5. Coleman denies the allegations contained in ¶ 5 of the plaintiffs' complaint.
6. Coleman denies the allegations contained in ¶ 6 of the plaintiffs' complaint.

COUNT I

7. Coleman admits the allegations contained in ¶ 7 as to cause of action; Coleman denies allegations contained in ¶ 7 as to negligent conduct by defendant; Coleman denies allegations contained in ¶ 7 as to personal injury to plaintiff, all contained in plaintiffs' complaint.

8. Coleman denies the allegations contained in ¶ 8 of the plaintiffs' complaint.
9. Coleman denies the allegations contained in ¶ 9 of the plaintiffs' complaint.

FIRST AFFIRMATIVE DEFENSE

If the plaintiff suffered injuries or damages as alleged, such damages were caused by the acts or omissions of someone for whose conduct the answering defendant was not and is not legally responsible and over whom the answering defendant had no control.

SECOND AFFIRMATIVE DEFENSE

The plaintiffs' complaint should be dismissed due to insufficiency of service of process as to the answering defendant.

THIRD AFFIRMATIVE DEFENSE

The plaintiffs' complaint fails to state a claim upon which relief could be granted and should be dismissed pursuant to Mass. R.Civ. P. 12 (b)(6).

FOURTH AFFIRMATIVE DEFENSE

The plaintiff, Robert A. Johnson has failed to state a claim upon which relief could be granted and should be dismissed pursuant to Mass. R.Civ. P. 12 (b)(6).

FIFTH AFFIRMATIVE DEFENSE

The plaintiff failed to mitigate his damages.

SIXTH AFFIRMATIVE DEFENSE

The plaintiffs' complaint and action is barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiff did deliberately assault and beat the defendant causing the defendant to sustain serious bodily injury and mental damage.

EIGHTH AFFIRMATIVE DEFENSE

The plaintiff did deliberately assault and batter the defendant using a dangerous weapon, a metal baton (hereinafter "ASP").

NINTH AFFIRMATIVE DEFENSE

The plaintiff by virtue of his use of excessive force did deliberately and maliciously destroy property.

TENTH AFFIRMATIVE DEFENSE

The plaintiff by excessive force, wrongful arrest, assault and battery of the defendant did cause him serious bodily injury.

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff wrongfully arrested and maliciously prosecuted the defendant.

TWELFTH AFFIRMATIVE DEFENSE

The plaintiff did wrongfully arrest, assault, batter and maliciously prosecute the defendant in violation of the defendant's civil rights under State law.

THIRTEENTH AFFIRMATIVE DEFENSE

The plaintiff did wrongfully arrest, assault, batter and maliciously prosecute the defendant in violation of the defendant's federal civil rights under 42 U.S.C. § 1983.

FOURTEENTH AFFIRMATIVE DEFENSE

If plaintiff was injured, it was in the course of and caused by his use of excessive force in arrest and his assault and battery of the defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

Any damages suffered by the plaintiff, Robert A. Johnson, were caused by his reckless, careless, negligent, and his willfully violent conduct and for which he had no legal cause, justification or excuse.

WHEREFORE, defendant demands plaintiffs' Complaint be dismissed with prejudice, and that costs and attorney's fees be awarded to the answering defendant in defense of this action.

COUNTERCLAIMS OF CLEMENT JACK COLEMAN II, AGAINST ROBERT A. JOHNSON

1. The plaintiff did deliberately assault and batter the defendant with his fists, pepper spray and a metal baton (ASP), causing the defendant to sustain serious bodily injury, physical and mental pain and suffering.
2. The plaintiff by use of excessive force did deliberately and maliciously destroy property, which resulted payment by the defendant to Safety Insurance Company, for the damage to the vehicle being driven by the defendant, which was owned by another party.
3. The plaintiff by his wrongful arrest, use of excessive force, carelessness, negligence, and/or recklessness did cause injury to defendant.

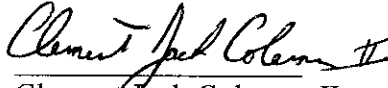
4. The plaintiff did maliciously prosecute the defendant, resulting in fifteen months of pre-trial incarceration.
5. As a direct result of the plaintiff's wrongful arrest, malicious prosecution, and the resulting pre-trial detention, the defendant lost his home to foreclosure, and incurred storage bills for his personal property.
6. The plaintiff did wrongfully arrest, arrested with excessive force, assaulted and battered the defendant in violation of the defendant's Civil Rights pursuant to 42 U.S.C. § 1983, and the law of this Commonwealth.

WHEREFORE, the defendant, Clement Jack Coleman II, demands judgment against Robert A. Johnson, for personal injuries, loss of property, costs, and violation of Civil Rights.

JURY CLAIM

The answering defendant claims a trial by jury on all issues in the complaint, and counterclaim.

Respectfully submitted,
The defendant

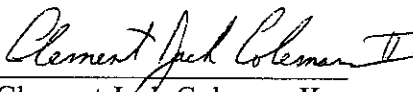

Clement Jack Coleman II
P.O. Box 866
Oak Bluffs, MA 02557
(508) 627-7840

DATED: August 26, 2005

CERTIFICATE OF SERVICE

I, Clement Jack Coleman II, pro se, hereby certify that I have this day served a copy of the foregoing document, by first-class mail, postage prepaid, to the following counsel of record:

Anthony M. Salerno, Esquire
SALERNO LAW GROUP, P.C.
316 Main Street, Suite 400
Worcester, MA 01608

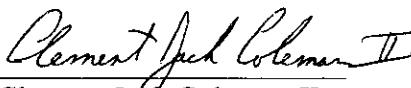

Clement Jack Coleman II

Dated: August 26, 2005

CERTIFICATE OF SERVICE

I, Clement Jack Coleman II, pro se, hereby certify that I have this day served a copy of the foregoing document, by first-class mail, postage prepaid, to the following counsel of record:

Anthony M. Salerno, Esquire
SALERNO LAW GROUP, P.C.
316 Main Street, Suite 400
Worcester, MA 01608


Clement Jack Coleman II

Dated: August 26, 2005

A true copy by photostatic process

Attest:

Asst. Clerk 

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 05-1483B

ROBERT A. JOHNSON,

Plaintiff,

vs.

CLEMENT JACK COLEMAN II,

Defendant,

FILED

SEP - 6 2005

ATTEST:

[Signature]
CLERK

NOTICE OF FILING FOR REMOVAL

TO: CLERK OF COURT – CIVIL
WORCESTER SUPERIOR COURT
COURT HOUSE, ROOM 21
2 MAIN STREET
WORCESTER, MA 01608

Pursuant to 28 U.S.C. 1446(d), the Defendant, Clement Jack Coleman II, hereby gives notice that on August 26, 2005, he filed with the United States District Court for the District of Massachusetts a Notice of Removal of this case from the Worcester Superior Court to the United States District Court for the District of Massachusetts. Pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal effects the removal and this Court shall proceed no further unless and until the case is remanded. A copy of the Notice of Removal is attached hereto.

⑤

Defendant, Clement Jack Coleman II,

[Signature]
Clement Jack Coleman II
P.O. Box 866
Oak Bluffs, MA 02557
(508) 627-7840

Dated: ~~August~~ ^{September} 1, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT A. JOHNSON,
Plaintiff,
v.
CLEMENT JACK COLEMAN II,
Defendant,

05-40152 FDS

NOTICE OF REMOVAL OF ACTION

Pursuant to 28 U.S.C. § 1441, the Defendant, Clement Jack Coleman II, hereby remove to this court the state court action described below. In support of this notice, the Defendant states:

1. ON OR ABOUT August 11, 2005, an action was commenced in the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts in the County of Worcester, entitled Robert A. JOHNSON v. Clement Jack Coleman II, bearing Civil Action No. 05-1483 B. The Defendant first received a copy of the summons and complaint on August 24, 2005 via U.S. Postal delivery.
2. Plaintiff, Robert A. JOHNSON, alleges motor vehicle negligence resulting in personal injury, and seeks compensatory relief.

JURISDICTION

3. THIS IS A CIVIL ACTION over which this court has jurisdiction. Removal is timely because this notice is filed within 30 days of the filing of the complaint.
4. Defendant has answered complaint and defendant's counterclaims include allegations of Civil Rights violations of both state and federal laws.

CONCLUSION

5. THIS notice of Removal is filed within 30 days of the Receipt by the Defendant of the summons and Complaint.

6. Defendant is providing written notice of this Removal of the state court action to plaintiff and the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts in the County of Worcester.

Respectfully submitted,

Defendant,

CLEMENT JACK COLEMAN II

Clement Jack Coleman II PRO SE

Clement Jack Coleman II
P.O. Box 866
Oak Bluffs, MA 02557
Phone: (508) 627-7840

A true copy by photostatic process
Attest: 
Asst. Clerk

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

05-40152

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

ROBERT A. JOHNSON

DEFENDANTS

Clement Jack Coleman II (PRO SE)

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant FILED
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number) SALERNO LAW GROUP
ANTHONY M. SALERNO, Esquire 1603 795-1200 PC
316 MAIN ST, Suite 402, Worcester, MA 01603

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities' Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

VI. CAUSE OF ACTION

Brief description of cause:

MV Negligence / Personal Injury

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

9,175.74

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 1, 2005Clement Jack Coleman II PRO SE

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Robert A. Clement Jack Coleman II **05-40152**
CLEMENT JACK COLEMAN II **CLERK'S OFFICE**

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☒ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME CLEMENT JACK COLEMAN II PRO SE
 ADDRESS P.O. Box 866 OAK BLUFFS, MA 02557
 TELEPHONE NO. (508) 627-7840